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9553.0020. subpart 32. Physical plant.

20. The Department agrees with Judge Lunde's and Chief Judge Harves' finding that this definition must be clarified and amends the definition as follows:

On page 5, line 28, delete the "." after "resident care", and insert " and the allocated portion of office space if the office is located in that facility." Insert "." after "guidelines" on line 26. On page 5, line 30, after "offices", delete "." and add , if those offices are not located in that facility".

9553.0030. subpart 1. item B.

32. The Department accepts Judge Lunde's recommendation that this item needs to be clarified. However, the Department does not accept Judge Lunde's recommendation that the words "specifically classified" be replaced by the words "directly identified", for the reasons stated in DHS comment 19. The Department wishes to clarify this item by deleting the words "specifically classified" (page 8, line 30) and inserting "readily assignable" to make this subpart consistent with the definition of indirect cost.

9553.0030. subpart 1. item C.

33. The Department accepts Judge Lunde's recommendation that part 9553.0030, subp. 1, item C should be rewritten to eliminate references to personnel and salary. The Department agrees with the language recommended by Judge Lunde and, therefore, makes the following amendments:

One page 8, lines 33 to 36, and page 9, lines 1 to 13, delete item C in its entirety.

On page 8, beginning with line 33, insert:

"C. Except for persons in top management, the compensation of any person having multiple duties, including persons who have only nominal top management responsibilities, must be directly identified and classified to the appropriate cost categories on the basis of time distribution records that show actual time spent, or an accurate estimate of time spent on various activities. Except as provided in item D, the compensation of persons who have top management responsibilities may be classified to a cost category other than administrative operating costs to the extent justified in time distribution records showing the actual time spent, or an accurate estimate of time spent on various activities. Any facility or provider group choosing to estimate the time spent in different cost categories must use a statistically valid method."

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9553.0030. subpart 1. item D.

35. Based on Judge Lunde's recommendation in comment 33, an amendment of item D is also necessary for consistency. Therefore, the department amends the amendment proposed during the post hearing comment period. The amendment should be changed as follows:

On page 9, in the first line of item D, delete "salary" and insert, "compensation".

9553.0030. subpart 4. item D.

43. The Department corrects the defect identified by Judge Lunde in item D by making the following amendment:

On page 11, line 24, insert after the word "to", "the property-related cost category of".

9553.0030. subpart 4. item E.

44. The Department will correct the defect identified by Judge Lunde in item E by making the following amendment:

On page 11, lines 32 to 34, after the words "item B", delete everything, and insert "1".

9553.0035. subpart 5. item A. subitem 3.

49. The Department agrees with the amendment recommended by Judge Lunde and amends the rule as follows:

On page 14, line 11, after "the information", insert "to be".

9553.0035. subpart 5. item A.

50. and 51. The department will correct the defect identified by Judge Lunde in item A, by amending the rule as follows:

On page 14, lines 14 to 17, delete subitem (4).
Beginning on line 14, insert new subitems (4) and (5) which will read:

"(4) include copies of all written agreements and debt instruments to which the facility is a party and any related mortgages, financing statements and amortization schedules, to explain the facility's costs and revenues:

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(5) if a cost or revenue item is not documented under subitems (3) or (4), the facility must document the amount, source and purpose of the item in its books and ledgers following generally accepted accounting principles and in a manner providing an audit trail."

On page 14, line 18, renumber the current subitem (5) to be subitem "(6)".

9553.0035, subpart 5, item C.

54. The Department accepts the amendment to 9553.0035, subp. 5, item C suggested by Judge Lunde and amends this item as follows:

On page 14, lines 32 to 35, delete the first two sentences of item C and insert:

"Payroll records must be maintained by a facility and must show the amount of compensation paid to each employee and the days and hours worked."

9553.0035, subpart 6, item A.

56. The Department corrects the defect identified in part 9553.0035, subpart 6, item A by making the following amendment:

At the bottom of page 15, after the text of subitem (5), insert this paragraph:

"For purposes of this item, inkind benefit means a benefit received in a medium other than cash as identified in Minnesota Rules, parts 3315.0200 to 3315.0600 for personal services performed."

Additionally, Judge Lunde recommends that in subitem (4) after "employees receive", the Department should delete "for their personal use" (page 11, line 28). The department agrees and has amended the rule accordingly.

9553.0035, subpart 6, item B.

57. The Department partially accepts the recommendation of Judge Lunde and makes the following amendment:

On page 16, line 6, after individual." at the end of subitem (1), insert:

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"Only the compensation of persons employed by the hour must be stated in terms of an hourly wage. The number of hours worked by salaried employees may be stated in terms of the average annual hours worked for each facility."

The last phrase in Judge Lunde's recommendation was not incorporated into this amendment because, in the department's experience with this industry, the term "full-time" has proven to be too vague. For example, some providers have reported they work full time in several facilities simultaneously.

9553.0035, subpart 6, item D.

60. The Department corrects the defect identified by Judge Lunde and makes the following amendment:

On page 16, line 24, in item D after, "reporting year.", insert:

"Payments made after the 121 - day period are allowable in the reporting year made."

9553.0035, subpart 6, item E.

61. The Department corrects the defect identified by Judge Lunde in item E by amending the rule as Judge Lunde suggested. Part 9553.0035, subp. 6, item E will be deleted (page 16, lines 24 to 26).

9553.0035, subpart 7, Limitations on related organization costs.

64. The Department corrects the defect in part 9553.0035, subp. 7, by making the following amendment:

On page 17, line 7, after "organizations, the", insert "allowable".

Chief Judge Harves, also directed the Department to clarify that the second paragraph of this item is an exception to the general rule as stated in the first paragraph. The Department corrects this defect by making the following amendment:

On page 17, line 3, after "profit", strike "." and insert "except as provided in the following paragraph.".

9553.0035, subpart 7, item C.

65. The Department corrects the defect identified by Judge Lunde in part 9553.0035, subp. 7, item C by making the following amendment:

On page 17, line 22, after "category.", insert: "The amount of gain to be offset shall be determined as in part 9553.0060, subpart 1, item D.".

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9553.0035, subpart 8, item B. Capitalization.

66. and 68. The Department corrects the defect identified by Chief Judge Harves and Judge Lunde in part 9553.0035, subpart 8, item B and accepts Judge Lunde's recommendation for clarification of item B, by making the following amendment:

Strike the existing text of item B (page 18, lines 2 through 10), and insert:

"B. Repairs that cost \$500 or less may be treated as an expense. Repairs that cost more than \$500 and that extend the estimated useful life of the asset by at least two years must be capitalized. Improvements made solely for the purpose of making an asset useful for purposes other than those for which it was originally used or more useful for the same purposes, must also be capitalized if the cost exceeds \$500. Except for repairs necessitated solely as a result of destructive resident behavior, repairs treated as an expense must be classified in the maintenance operating cost category. Repairs necessitated solely as a result of destructive resident behavior and treated as an expense, must be classified as a program operating cost."

As the Department understands the defect identified by Chief Harves and Judge Lunde in this item, destructive resident behavior repairs which are permitted to be expensed by this provision should be placed in the program cost category in order that such repairs are not limited by the maintenance cost category limitations. The Department believes its proposed language satisfies the defect.

9553.0035, subpart 9, item B.

70. and 71. The Department corrects the defects identified by Judge Lunde in part 9553.0035, subp. 9, item B, by making the following amendments:

On page 19, line 3, after "January 1," strike "1984", insert "1986".

On page 19, line 7, in subitem (1), after "exceed", strike "one" and insert "2.5".

9553.0035, subpart 10. Retirement contributions.

72. The Department corrects the defect cited by Judge Lunde in part 9553.0035, subpart 10 by making the following recommended amendment:

On page 19, lines 14 to 17, after "contributions.", strike the entire text of subp. 10 and insert: "Retirement contributions for

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each employee must be limited to either a qualified pension plan or a qualified profit sharing plan submitted to, and approved by, the Internal Revenue Service."

9553.0035. subpart 12. Preopening costs.

73. The Department corrects the defect identified in part 9553.0035, subpart 12, items A and B by making the following recommended amendment:

In item A, page 19, line 29, after "A.", delete "One time preopening." Insert "Preopening".

In item B, page 19, line 33, after "B." delete "One time preopening." Insert "Preopening".

9553.0035. Subpart 14. Top management compensation.

77, 78, and 80. The Department corrects the defects identified by Judge Lunde in part 9553.0035, subp. 14, by making the recommended amendments as follows:

On page 20, line 12, after "items A to", strike "G" and insert "F".

Delete the entire text of item A on page 20, lines 15 - 28.

Reletter items B to G accordingly.

On page 21, line 7, after " items", strike "A, B, and C," and insert "A and B.".

On page 21, line 23, after "item", strike "B," insert "A".

On page 21, line 24, delete "For each full," and insert "The".

On page 21, line 28, after "(1967 = 100)", delete "," and insert "shall be used to increase".

On page 21, line 28, after "compensation", strike "per bed".

On page 21, line 29, insert "1" after "item A" and delete the remainder of the sentence.

9553.0035. subpart 15. General cost principles.

81. Comment 81 was mistakenly listed on page 85 of Judge Lunde's report as a defect.

9553.0040. subpart 2. Maintenance operating costs.

93. Judge Lunde's reference to Finding 67 in Finding 93, should be a reference to Finding 66.

Because of the amendment made in response to Finding 66, it is necessary to amend part 9553.0040, subparts 1 and 2 as follows:

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On page 26, line 34, delete "and".
On page 26, line 35, delete "." and insert "and".
On page 26, after line 35, insert "K. repairs necessitated solely as a result of destructive resident behavior."
On page 27, line 28, after "part 9553.0035", insert "subpart 8, except as in subpart 1, item K;".

9553.0040, subpart 3, item P.

97. The Department corrects the defect identified by Judge Lunde in part 9553.0040, subpart 3, item P by making the following amendment:

On page 28, lines 34 and 35, delete the entire text of item P and reletter the subsequent items in this subpart accordingly.
On page 30, in the amendment proposed by the Department in the post hearing comment period:

In item C, after "insurance;" strike "and".
In item D, after "insurance", strike "." and insert "and".
Insert the following phrase: "E. The portion of preopening costs amortized as in part 9553.0035, subpart 12, item B."

9553.0041, subpart 1. Required cost reports.

102. The Department agrees with the recommendation of Judge Lunde and amends part 9553.0041, subpart 1 as follows:

On page 30, line 7, after "no later than", delete "March 31" and insert "April 30".

9553.0041, subpart 2. Required information.

103. The Department corrects the defect identified by Judge Lunde in part 9553.0035, subpart 7, item C, by making the following amendment:

On page 31, line 2, after "changes in financial position," delete "appropriate".
On page 31, line 3, after "notes to the financial statements", delete ", any applicable", insert "and".
On page 31, line 4, after "information", insert "as required of an audit conducted in accordance with generally accepted auditing standards".

The Department intended, as Judge Lunde indicated, that notes and supplemental information required be only those required of an audit conducted in accordance with generally accepted auditing standards, and amends this item to clarify this matter.

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9553.0041, subpart 2, item K.

105. The Department corrects the defect identified in item K by making the following amendment:

On page 32, line 10, after "part 9553.0040.", insert "The charts must contain the information specified in the cost report form.".

9553.0041, subpart 3. Supplemental reports.

106. The Department corrects the defect identified in part 9553.0041, subp. 3, item K, by making the following amendment:

On page 33, line 10, after "changes in financial position", delete "appropriate". After "notes to the financial statement" delete ", any applicable".

On page 33, line 11, after "supplemental information", delete "." and insert, "as required of an audit conducted in accordance with generally accepted auditing standards.".

The Department also accepts the recommendation made by Judge Lunde and amends item A as follows:

On page 33, line 7, after "for that entity.", delete "Financial" and insert, "The commissioner may also require that the financial.".

On page 33, line 8, after "statements", delete "must".

9553.0041, subpart 8, item B.

113. and 114. The Department accepts the recommendation suggested by Judge Lunde and amends item B as follows:

On page 34, line 28, delete "additional" and insert "supplemental". After "information", delete "necessary to support the payment rate request". Insert, "according to subpart 3.".

The Department corrects the defect identified by Judge Lunde and Chief Judge Harves by making the following amendment as suggested by Chief Judge Harves:

Delete lines 32 to 35 on page 34.

On page 34, line 36, delete "manner.". Replace the deleted sentence by inserting:

"The commissioner shall extend this time if the facility submits a written request and if the extension of time will not prevent the commissioner from establishing rates in a timely manner."

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The Department corrects the defect identified by Judge Lunde in item B by making the following amendments:

On page 34, line 36, after "manner.", insert "Except as provided in item C.", delete "Failure" and insert "failure".

On page 35, line 4, after "subpart 10.", insert "Except as provided in item C.". Delete "Failure" and insert "failure".

On page 35, line 10, insert item C:

"Except for the copy of the lease agreement, failure to provide the information in subpart 2, item I and subpart 3, item C when the lessor refuses to provide the information shall not result in a reduction in the payment rate as specified in subpart 10 if the lease or rental agreement was arms-length in accordance with part 9553.0060, subpart 7, item B."

Since the 20% penalty will not be imposed when a lessor fails to provide the information on the cost and debt of assets in an arms-length lease agreement, the Department believes that clarification of part 9553.0060, subp. 7 is also necessary. The proposed change is necessary because, if the Department cannot obtain the lessor's asset information, the Department would then have to disallow the arms-length lease cost [part 9553.0060, subp. 7, item C, subitem (2)] without the replacement of that cost with the lessor's depreciation and interest costs. This disallowance would impose a significant financial penalty on the provider which would be contrary to the intent of Judge Lunde's finding. In order to correct this problem, the Department proposes that arms-length physical plant leases be allowed and makes the following amendments:

In part 9553.0060, subp. 7, item C, on page 58, lines 16 and 17, delete "incurred under agreements entered into after December 31, 1983,".

On page 58, line 18, delete "disallowed" and insert, "allowed subject to the limitations in item E".

On page 58, line 19, delete "Arms-length leases", and insert "Leases".

In item D, on page 58, line 28, after "for", insert "non arms-length".

On page 58, line 29, after "Subitem (1) or", delete "(2)", and insert "(3)".

In item E on page 59, line 2, after "subitems", insert "(2)".

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On page 59, line 10, after "subpart 2.", insert "If the lessor's interest rate is not provided by the lessor. the commissioner shall use the interest rate limit established by the rule in effect on the date the lease or rental agreement became effective.".

9553.0041. subpart 10. item C.

118. The Department corrects the defect identified in item C by making the following amendment:

On page 36, line 4, after "inadequacy is", delete "not".

9553.0050. subpart 1. Establishment of allowable historical operating costs per diem. item A. subitem (1). unit (f).

127. The Department corrects the defect in 9553.0050, subp. 1, item A, subitem (1), unit (f) (located in Attachment II between pages 40 and 41) in the DHS amendment proposed in the post hearing comment period by making the following recommended amendment:

In unit (f), after "facility's licensed beds.", delete "The commissioner may recompute the limit in this unit once within a five-year period."

9553.0050. subpart 1. item A (2).

129. Judge Lunde suggested the Department consider placing the cost of accountant services outside the limitation for 1986. Rather than make the changes suggested by Judge Lunde, the Department addresses this problem in a forthcoming bulletin which states that any facility whose reporting year ends during 1985 may file only the cost report required by this permanent rule. The Department believes that this procedure is cost effective for providers and the state since it will reduce administrative expenses.

9553.0050. subpart 1. item A. subitem (2).

131. Judge Lunde's interpretation of the department's intent in part 9553.0050, subpart 1, item A, subitem (2) is correct.

Further, the Department clarifies that the part cited in the amendment to subitem (2) proposed in the post hearing comment period is "part 9553.0040" and that the word "and" in that amendment should be followed by the word "be". This number is blurred on some copies of the rule.

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